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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 M.F.,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

CASE NO. C13-1790JLR

ORDER APPROVING MINOR
SETTLEMENT

15 **I. INTRODUCTION**

16 Before the court is Plaintiffs M.F., a minor, and her parents, Veronica Lara and
17 Herbert Faamausili's motions (1) for and an order approving the settlement herein
18 involving the minor, M.F. (Mot. (Dkt. # 14)), and (2) for sealing Exhibits A, B, and C of
19 the declaration of James L. Holman (Holman Decl. (Dkt. # 15)), which was filed in
20 support of the motion to approve the settlement (Mot. to Seal (Dkt. # 13)). The court has
21 considered the motions, the responses filed by Defendant United States of America ("the
22 government"), the balance of the record, and the applicable law. Being fully advised the

1 court GRANTS Plaintiffs' motion to approve the settlement and DENIES Plaintiffs'
2 motion to seal, but without prejudice to re-filing in a manner that complies with the
3 court's local rules and meets the standards required in federal court.

4 **II. BACKGROUND**

5 Plaintiffs filed their complaint for medical malpractice and loss of consortium on
6 October 4, 2013. (*See* Compl. (Dkt. # 1).) In their complaint, Plaintiffs allege that during
7 the time that Defendant Cordelia Dickinson, M.D., provided health care to M.F., M.F.
8 developed a right-eye white reflex, subsequently diagnosed as retinoblastoma. (*Id.*
9 ¶ 3.4.) M.F.'s retinoblastoma was initially diagnosed by a different doctor on September
10 16, 2011. (*Id.* ¶ 3.5.) As a result of the diagnosis, M.F. was sent to Children's Hospital,
11 where M.F.s right eye was removed in surgery and replaced with an orbital implant. (*See*
12 *id.* ¶¶ 3.6-3.8.) Plaintiffs further allege that if Defendants had met the reasonably prudent
13 standard of care with respect to their care of M.F., then M.F. would not have lost his eye
14 and his vision would have been normal. (*Id.* ¶ 3.9.) Plaintiffs assert claims of medical
15 malpractice against Defendants. (*Id.* ¶¶ 4.1-4.4.)

16 On January 14, 2015, the parties advised the court that they had reached a
17 settlement. (*See* 1/14/15 Dkt. Entry.) Previously, on January 9, 2015, Plaintiffs filed a
18 petition for approval of the settlement and settlement trust involving M.F. in Superior
19 Court for the State of Washington for Pierce County. (*See* Holman Decl. Ex. C.) The
20 Superior Court approved the settlement on January 28, 2015. (*See id.* Ex. D.)

21 On January 28, 2015, Plaintiffs filed a motion seeking this court's approval of the
22 settlement involving the minor, M.F., as well. (*See generally* Mot.) Plaintiffs' motion is

1 based on the identical materials that they submitted regarding the settlement to the
2 Superior Court. (*See generally* Holman Decl. Exs. A-C.) Plaintiffs also filed their
3 motion to seal the exhibits attached to Mr. Holman’s declaration that same day. (*See*
4 *generally* Mot. to Seal.) The court now considers both motions.

5 **III. ANALYSIS**

6 **A. Motion to Seal**

7 Plaintiffs’ motion to seal Exhibits A-D of Mr. Holman’s declaration consists of
8 one sentence asking for order permitting Plaintiffs to file the documents under seal. (*See*
9 *generally* Mot. to Seal.) The government’s response consists of a single sentence
10 indicating that it does not oppose Plaintiffs’ motion to seal. (*See* Resp. to Mot. to Seal
11 (Dkt. # 16).)

12 Under the court’s Local Rules, “[t]here is a strong presumption of public access to
13 the court’s files.” Local Rules W.D. Wash. LCR 5(g); *see also* *Nixon v. Warner*
14 *Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). To rebut this presumption, a party must file a
15 motion that includes “a specific statement of the applicable legal standard and the reasons
16 for keeping a document under seal, with evidentiary support from declarations where
17 necessary.” Local Rules W.D. Wash. LCR 5(g)(3)(B). Thus, the burden is on the
18 moving party to come forward with an applicable legal standard justifying the sealing of
19 the documents at issue and to produce evidentiary support showing that the standard is
20 met. *See id.*

21 A party must demonstrate “compelling reasons” to seal judicial records attached to
22 a dispositive motion. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th

1 Cir. 2006). A party seeking to seal records in connection with a nondispositive motion,
2 however, must show “good cause” under Federal Rule of Civil Procedure 26(c). *In re*
3 *Midland Nat’l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir.
4 2012); *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (“In light of the
5 weaker public interest in nondispositive materials, we apply the ‘good cause’ standard
6 when parties wish to keep them under seal.”). The “compelling reasons” standard applies
7 to this motion because approval of the minor settlement agreement is dispositive of the
8 proceeding. *See M.P. ex rel. Provins v. Lowe’s Companies, Inc.*, No. 11-cv-01985, 2012
9 WL 1574801, at *1 (E.D. Cal. May 3, 2012) (holding that the “compelling reasons”
10 standard applies to a motion to seal related to a minor’s settlement because an order
11 approving the settlement is dispositive); *see also White v. Sabatino*, No. 04-00500
12 ACK.LEK, 2007 WL 2750604, at *2 (D. Haw. Sept. 17, 2007) (holding that the
13 “compelling reasons” standard applied to a motion to seal documents related to a motion
14 to set aside a minor’s settlement).

15 Under the “compelling reasons” standard, the party seeking to seal judicial records
16 bears the burden of “articulat[ing] compelling reasons supported by specific factual
17 findings . . . that outweigh the general history of access and the public policies favoring
18 disclosure, such as the public interest in understanding the judicial process.” *Kamakana*,
19 447 F.3d at 1178-79 (internal citations and quotation marks omitted). “In turn, the court
20 must conscientiously balance the competing interests of the public and the party who
21 seeks to keep certain judicial records secret.” *Id.* at 1179 (internal alterations, quotation
22 marks, and citations omitted). Then, “if the court decides to seal certain judicial records,

1 it must base its decision on a compelling reason and articulate the factual basis for its
2 ruling, without relying on hypothesis or conjecture.” *Id.*

3 Plaintiffs’ motion to seal neither meets nor even recognizes the “compelling
4 reasons” standard or the various procedural requirements contained in Local Rule 5(g)
5 with respect to motions to seal or redact court records. Certainly some of the information
6 contained in the exhibits at issue should be redacted from any publicly filed document.
7 For example, the court’s local rules require parties to “refrain from including, or . . .
8 partially redact where inclusion is necessary” certain personal data identifiers “from all
9 documents filed with the court.” *See* Local Rules W.D. Wash. LCR 5.2(a). Specifically,
10 under Local Rule LCR 5.2(a), parties must redact dates of birth to the year of birth and
11 the names of minor children to their initials. *See id.* Other sensitive financial
12 information contained in the exhibits may warrant redaction under the applicable
13 standard, but Plaintiffs have yet to make this showing or cite to any supporting case law,
14 if any, on the issue. The court’s local rules indicate that a party seeking to file
15 information under seal must “explore redaction and other alternatives” to filing an entire
16 document under seal. *See* Local Rules W.D. Wash. LCR 5(g)(3)(A). Indeed, much of
17 the material that Plaintiffs seek to file under seal contains essentially the same
18 information that is contained in their complaint, which is not filed under seal. (*See*
19 Compl.) Thus, the court believes that redaction of certain sensitive information that
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1 meets the “compelling reasons” standard rather than a blanket order sealing the entirety
2 of the exhibits at issue is more likely to be the appropriate approach here.¹

3 Further, the court notes that the mere fact that the parties’ settlement agreement
4 may contain a confidentiality provision, without more, does not constitute good cause, let
5 alone a compelling reason to seal information concerning the settlement agreement’s
6 provisions on the court’s docket. *See Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d
7 1122, 1137-38 (9th Cir. 2003) (holding that the existence of a confidentiality provision in
8 a blanket protective order issued by a district court, which the party seeking to file
9 documents under seal had relied upon in consenting to certain discovery requests and in
10 settling a litigation, does not, without more, constitute a compelling reason to seal
11 information on the court docket). Other district courts in this Circuit have found that the
12 existence of a confidentiality provision is an insufficient interest to overcome the
13 presumption that a court-approved settlement agreement is a judicial record, open to the
14 public. *See, e.g., M.P. ex rel. Provins v. Lowe’s Cos., Inc.*, 2012 WL 1574801, at *2
15 (E.D. Cal. May 3, 2012) (denying a motion to seal the application for approval of a
16 minor’s settlement, the order approving the settlement, the record of the hearing on the
17 application, and related documents, except with respect to identifying information as

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19 ¹ Exhibits C and D to Mr. Holman’s declaration consist of the petition that Plaintiffs filed
20 in state court seeking approval of the minor settlement and trust and the state court’s order
21 approving the petition. (*See Holman Decl.* at 2, Exs. C, D.) Nothing in these documents or in
22 Mr. Holman’s declaration indicates that these documents were filed under seal in the state court.
If these documents were not filed under seal in state court, they should not have been filed under
seal in this court either. If Plaintiffs re-file their motion to seal, they shall provide an explanation
to this court as to whether these Exhibits C and D were originally filed under seal in state court
or not.

1 delineated in Fed. R. Civ. P. 5.2 and the court's local rules); *see also Select Portfolio*
2 *Servicing v. Valentino*, No. C 12-0334 SI, 2013 WL 1800039, at *3 (N.D. Cal. Apr. 29,
3 2013) ("That [the parties] agreed among themselves to keep the settlement details private,
4 without more, is no reason to shield the information from . . . the public at large.").
5 Without more information from the parties, however, the court does not decide this issue
6 here. Indeed, it is unclear to the court if a confidentiality provision in the minor
7 settlement agreement is even the basis for Plaintiffs' request to seal the information
8 contained in the exhibits at issue. However, in light of the foregoing authorities, the court
9 notes that it seems doubtful that a confidentiality provision within the settlement
10 agreement would be sufficient, standing on its own, to meet the compelling reasons
11 standard for sealing information related to the minor settlement.

12 Based on the foregoing, the court DENIES Plaintiffs' motion to seal Exhibits A-D
13 of Mr. Holman's declaration, but without prejudice to re-filing a motion to seal that
14 conforms to the court's order above, complies with the court's local rules, including the
15 requirement to consider the redaction of sensitive information rather than blanket sealing
16 of the exhibits, and provides the court with a compelling reason to seal the requested
17 information. Plaintiffs shall re-file their motion to seal within 14 days of the date of this
18 order. In the meantime, the court DIRECTS the clerk to maintain the seal on Exhibits A-
19 D of Mr. Holman's declaration (Dkt. ## 15-1, 15-2, 15-3, 15-4). If Plaintiffs do not re-

1 file their motion within 14 days of the date of this order, the court will direct the clerk to
2 lift the seal on the exhibits at issue.²

3 **B. Motion to Approve Minor Settlement**

4 District courts have a special duty, derived from Federal Rule of Civil Procedure
5 17(c), to safeguard the interests of litigants who are minors. *See Robidoux v. Rosengren*,
6 638 F.3d 1177, 1181 (9th Cir. 2011). In the context of proposed settlements in suits
7 involving minor plaintiffs, the district court's special duty requires it to "conduct its own
8 inquiry to determine whether the settlement serves the best interests of the minor." *Id.*
9 (quoting *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978) (internal quotation
10 marks omitted)). Thus, although the court does not ignore the decision of the state court
11 in approving the minor settlement at issue here, the fact that Plaintiffs sought approval of
12 their settlement in state court does not discharge this court's duty to "conduct its own
13 inquiry." *Id.*

14 In *Robidoux*, the Ninth Circuit provided guidance to a district court considering
15 whether to approve a proposed settlement of federal claims involving minors. *Id.* at
16 1181. The Ninth Circuit held that a district court must consider whether the proposed
17 settlement is fair and reasonable as to each minor plaintiff. *Id.* at 1182. Where the claims
18 are based on federal law, the district court should limit the scope of its review to the
19 reasonableness of the minor plaintiffs' net recovery in light of the facts and specific
20 claims at issue and recoveries in similar cases. *Id.* at 1181-82. The Ninth Circuit held

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22 ² The court will ensure that the full name of the minor plaintiff is redacted in accord with
Local Rule LCR 5.2. *See* Local Rules W.D. Wash. LCR 5.2.

1 that the district court should conduct its inquiry without regard to the amount received by
2 adult co-plaintiffs or the fee they agreed to pay plaintiffs' counsel. *Id.* at 1182. In so
3 ruling, the court rejected the "typical practice" of district courts in the Ninth Circuit "to
4 apply state law and local rules governing the award of attorney's fees" in evaluating the
5 reasonableness of a settlement involving a minor plaintiff's federal claims, because that
6 practice "places undue emphasis on the amount of attorney's fees . . . instead of focusing
7 on the net recovery of the minor plaintiffs" *See id.* at 1181.

8 The *Robidoux* court, however, expressly limited its ruling to a district court's
9 evaluation of a settlement involving a minor's federal claims. *Id.* at 1179 n.2 ("Our
10 holding is limited to cases involving the settlement of a minor's federal claims."). The
11 court did "not express a view on the proper approach for a federal court to use when
12 sitting in diversity and approving the settlement of a minor's state law claims." *Id.*; *see*
13 *also McCue v. S. Fork Union Sch. Dist.*, No. 1:10-cv-00233-LJO-MJS, 2012 WL
14 2995666, at *2 (E.D. Cal. July 23, 2012) ("*Robidoux* expressly declined to describe the
15 proper approach when approving a [minor's] settlement arising under state law . . .");
16 *but see Doe ex rel. Scott v. Gill*, Nos. C 11-4759 CW, C 11-5009 CW, C 11-5083 CW,
17 2012 WL 1939612, at *2 (N.D. Cal. May 29, 2012) ("While the Ninth Circuit has not
18 expressed a view as to the proper approach for courts to use when approving settlement
19 of a minor's claims arising under state law, . . . and [this minor plaintiff] brings claims
20 under both federal and state law, the Court applies the same standard to settlement of all
21 of her claims.") (citing *Robidoux*, 638 F.3d at 1179 n.2). Thus, some courts within the
22 Ninth Circuit have continued to apply state law when evaluating minor settlements

1 arising out of state law claims based on diversity jurisdiction. *See Primerica Life Ins. Co.*
2 *v. Cassie*, No. CIV. 2:12-1570 WBS GGH, 2013 WL 1705033, at *1 (E.D. Cal. Apr. 19,
3 2013)).

4 Plaintiffs here allege only state law claims based on medical malpractice and loss
5 of consortium. (*See generally* Compl.) There are no federal claims before the court.
6 (*See generally id.*) The jurisdiction of the court, however, is not based on diversity, but
7 rather on 28 U.S.C. § 1346(b)(1) for “civil actions on claims against the United States,
8 for money damages . . . for . . . personal injury . . . caused by the negligent act . . . of any
9 employee of the Government while acting within the scope of his office or employment,
10 under circumstances where the United States, if a private person, would be liable to the
11 claimant in accordance with the law of the place where the act or omission occurred.”
12 (Compl. ¶ 2.1 (citing 28 U.S.C. § 1346(b)).) Thus, this case does not fit neatly within the
13 *Robidoux* court’s ruling concerning the evaluation of minor settlements involving federal
14 claims, 638 F.3d at 1181-82, or the *Robidoux* court’s carve out for settlements involving
15 state law claims based on diversity jurisdiction, *id.* at at 1179 n.2.

16 A close evaluation of the *Robidoux* court’s reasoning, however, provides the court
17 with guidance on whether to apply state law or the standard set forth in *Robidoux* in
18 evaluating the minor settlement here. In *Robidoux*, the Ninth Circuit expressed concern
19 that the district court’s typical practice of applying state law when evaluating minor
20 settlements involving federal claims placed undue emphasis on the amount of attorney’s
21 fees awarded. *See* 638 F.3d at 1181 (stating that the district court’s typical practice of
22 applying state law and local rules to evaluate minor settlements involving federal claims

1 “places undue emphasis on the amount of attorney’s fees provided for in a settlement,
2 instead of focusing on the net recovery of the minor plaintiffs under the proposed
3 agreement”). Here, however, even if the court were inclined to apply state law, which
4 unlike *Robidoux*, requires the court to evaluate the reasonableness of any attorney’s fees
5 provided by the settlement,³ the need for such an evaluation is muted at best. In an
6 action, such as this one, alleging state law claims against an employee of the federal
7 government, any attorney’s fees provided by the settlement are already limited by federal
8 statute to no more than 25% of the settlement amount. *See* 28 U.S.C. § 2678. Thus, there
9 is little rationale to depart from the *Robidoux* standard in favor of state law because the
10 amount of attorney’s fees is already limited thereby reducing any value in assessing their
11 reasonableness.

12 The *Robidoux* court was also concerned that the district courts’ typical practice of
13 applying state law when evaluating minor settlements involving federal claims provided
14 inconsistent results. *See* 638 F.3d at 1181-82 (“Inconsistency can be avoided if district
15 courts limit the scope of their review to the question whether the net amount distributed
16 to each minor plaintiff in the settlement is fair and reasonable, in light of the facts of the
17 case, the minor’s specific claim, and recovery in similar cases.”). Although only state
18 law claims are at issue here, the court believes that Ninth Circuit’s concern with
19 consistency would apply with respect to the settlement of claims against the federal

21 ³*See In re Settlement/Guardianship of AGM*, 223 P.3d 1276, 1283 (Wash Ct. App. 2010)
22 (“SPR 98.16W authorizes attorney fees for settlements on behalf of a minor and contemplates
the superior court’s exercise of discretion over these fees.”).

1 government or its employees as well. For the foregoing reasons, the court declines to
2 apply state law or rules with respect to its evaluation of the minor settlement here, and
3 instead applies the standard articulated by the Ninth Circuit in *Robidoux*.

4 Under *Robidoux*, the court should limit the scope of its review to the
5 reasonableness of the minor plaintiff's net recovery in light of the facts and specific
6 claims at issue and recoveries in similar cases. 638 F.3d at 1181-82. Based on the
7 court's review of the information contained in the exhibits to Mr. Holman's declaration,
8 the court concludes that the minor settlement herein is reasonable and the court
9 APPROVES it.

10 Unfortunately, as discussed above, Plaintiffs have placed under seal the
11 information that *Robidoux* instructs should form the basis for the court's decision
12 concerning the reasonableness of the minor settlement. (*See generally* Mot., Mot. to
13 Seal, Homan Decl.) In order to maintain the seal on the net amount of the settlement that
14 M.F. will receive and the guardian ad litem's evaluation of M.F.'s claims, Plaintiffs must
15 persuade the court that sealing this information somehow meets the compelling reasons
16 standard delineated above.⁴ Otherwise, the court will lift the seal on this information
17 (and any other information contained in the exhibits at issue that does not meet the
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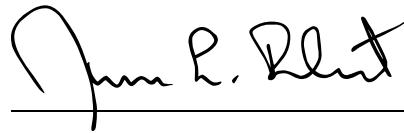
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21 ⁴ As stated above, the court recognizes that certain information contained in the guardian
22 ad litem's report must be at least redacted prior to unsealing (*i.e.*, M.F.'s full name, etc.). *See supra* § III.A.

1 compelling reasons standard) so that the basis for the court's decision approving the
2 minor settlement will be transparent.⁵

3 IV. CONCLUSION

4 Based on the foregoing analysis, the court GRANTS Plaintiffs' motion for
5 approval of the minor settlement herein (Dkt. # 14). The court, however, DENIES
6 Plaintiffs' motion to seal (Dkt. # 13), but without prejudice to re-filing in accord with the
7 court's local rules and the directives in this order within 14 days of the date of this order.
8 Finally, the court STRIKES the February 17, 2015, trial date and all other pre-trial
9 deadlines contained in the court's scheduling order (Dkt. # 10).

10 Dated this 12th day of February, 2015.

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13 JAMES L. ROBART
14 United States District Judge

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22 ⁵ Despite the court's approval of the minor settlement in this matter, counsel for the
parties are not discharged from this matter until the issues surrounding the sealing of Exhibits A-
D to Mr. Holman's declaration have been resolved.